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ORGANIZATIONAL QUESTIONS ON THE DEVELOPMENT OF

LEGAL SCIENCE IN THE CPR

-Communist China-

by Chou Hsin-min

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ORGANIZATIONAL QUESTIONS ON THE DEVELOPMENT
OF LEGAL SCIENCE IN THE CPR

Following is the translation of an article by Chou Hsin-min in Sovetskoye Gosudarstvo i Pravo, No 3, Moscow, 12 Feb 1961, pp 64-72.7

I
Over eleven years have passed since the establishment of the Chinese People's Republic. During this historically short period the workers, peasants and the revolutionary intellectuals of the entire country have achieved historically unprecedented successes under the guidance of the Chinese Communist Party and its Central Committee headed by Mao Tse-tung.

The successes of the Chinese people are not limited to achievements in economic construction, which completely transformed the appearance of old China. Such success also occupies a place of importance in the sphere of political judicial work and in cultural construction.

The legal science in the new China originated in the newly liberated regions and gradually became consolidated during the prolonged revolutionary struggle. It absorbed the remarkable traditions of political service to the proletariat, guiding itself with Marxist-Leninist theories and the works of Mao Tse-tung. After liberation and in the course of a constant ideological struggle against the vestiges of rightist viewpoints, the new legal science received further development, which may not be examined outside of the sphere of political struggle both within and outside of the state.

The legal science is first of all a class science, it is a powerful weapon in the class struggle; therefore the basic tasks of the legal science in the New China were the tasks of a final liquidation of the old legal system based on the notorious Kuomintang "Complete Book of Six Laws" [see note], as well as the liquidation of rightist viewpoints of the bourgeois, the creation of the newest socialist legal science based on Marxist-Leninist theory.

[Note] "Complete Book of Six Laws" included the Constitution, the civil and the civil-procedural, criminal, criminal-procedural and trade codes.

Scientific research work in the field of law in the KNR (Kitayskaya Narodnaya Respublika--Chinese People's Republic) is not the lot of isolated individuals. Even before the creation of the Institute of Law of the Academy of Sciences KNR in 1958, scientific research work in the field of law was conducted by the corresponding political judicial organs, groups and institutes. Beginning with 1958 extensive organizational work was conducted under the direction of the Communist Party of China that permitted them to fully open up all the potential possibilities for the development of the legal science.

Considerable aid in this respect was extended to the KNR

by the Soviet Union and by other socialist countries. Scientist-jurists of the USSR helped the Chinese scientists in their study of the legal science. The Soviet Union extended to the KNR considerable assistance in the training of judicial cadres thereby making an invaluable contribution to the development of legal science in China. Chinese jurists express their heartfelt gratitude to the Soviet jurists for their unselfish aid.

II

What are the paths taken in the development of legal science in the KNR? The most important ones are those leading to the liquidation of the old legal system, the conduct of a judicial reform, a nationwide examination and discussion of the constitution, a struggle against the rightist elements on the legal front and creation of the people's communes.

1. Liquidation of the old legal system. Early in 1949 when the great Chinese revolution, under the guidance of the Communist Party attained a decisive victory throughout the country after a struggle that lasted 28 years, the counter-revolutionary Kuomintang rightist system was already falling apart at the seams. However, the Kuomintang counter-revolutionary clique, using the "constitution" published in 1947, aspired to preserve its "legal domination" over China at any price.

In 1949, Chiang Kai-shek promulgated, as one of the "peaceful conditions", a demand that the traditional legal institutes "were to be preserved". The purpose of this statement was to force the people to recognize counter-revolutionary Kuomintang legislation as being fair, to compel the people to recognize the Kuomintang government as the legal government and not to aspire to overthrow it.

Mao Tse-tung in his statement "On the Current Moment" made on 14 January 1949, proposed eight new conditions of which the second and third ones were directed at an elimination of the false constitution and of the old law. This not only struck a blow at the aspirations of the Kuomintang clique to preserve the counter-revolutionary domination, but it drew a clear borderline between the old and the new law. If the old one is not totally destroyed then the new one will have difficulties in growing and therefore, it is necessary to finally destroy the old one and under these conditions to create and develop the new one.

The "Directive on the Revocation of the Kuomintang Complete Book of Six Laws and on the Establishment of Principles of Justice in the Liberated Regions" that was published by the Central Committee of the Communist Party of China in February of 1949 indicated: "Under the power of the people's democratic dictatorship guided by the proletariat and based on an alliance between the workers and the peasants, the Kuomintang Complete Book of Six Laws must be revoked. Work of the people's justice

cannot rely on the Kuomintang Complete Book of Six Laws, but must rely on new people's laws."

After the publication of this directive of the Central Committee of the Communist Party of China and of the statement by Mao Tse-tung "On the Current Moment", the People's Government of North China, in accordance with the letter of instruction published on 1 April 1949 -- "On the Revocation of the Kuomintang Complete Book of Six Laws and of all Reactionary Laws", stressed that "Kuomintang laws were intended for a preservation of the domination by the landlords, shop keepers, bureaucratic bourgeoisie and for a suppression of assistance by the broad masses of the people.

The class nature of the reactionary and the people's legislation are completely different; it is impossible to speak of a 'some kind of successiveness' of the reactionary and the people's laws and therefore the reactionary Kuomintang laws must be fully liquidated throughout the country."

Article 17 of the Common Program of the People's Political Consultative Conference, which was adopted at their first session on 29 September 1949, established that: "Laws, directives and the judicial system of the Kuomintang reactionary government that oppress the people are liquidated. Laws will be evolved and directives issued that are designed to protect the interests of the people, and a system of people's justice will be created." Therefore, the directive issued by the Central Committee of the Communist Party of China and the statement made by Mao Tse-tung were fully incorporated in the Common Program of the People's Political Consultative Conference.

After the attainment of political power by the proletariat and the liquidation of the Kuomintang legal system, it was necessary to finally liquidate the reactionary law of the exploiting classes, to create a new revolutionary law that responded to the demands of the people. However, at that time there were a number of people who still shared the old legal viewpoints and who erroneously supposed that "The Book of Six Laws" was still in effect, and that, in any case, some of its facets were in accordance with the interests of the broad masses of people. There is no doubt that such incorrect reasoning was nothing other than an attempt to re-incubate the Kuomintang legal system; they were harmful to the matter of establishing revolutionary law, and it was necessary to fully expose them.

The Central Committee of the Communist Party of China, pointing out the necessity for a liquidation of the Kuomintang legal system, seriously criticized the incorrect viewpoints described above regarding the possibility of applying the old Kuomintang legal system under the new conditions. In accordance with the directives issued by the Central Committee of the Communist Party of China, the scientist-jurists appeared at the various political-judicial institutions in Peiping with lectures

which were based on a scientific Marxist-Leninist analysis. The lecturers pointed out the class essence of state and law, revealed the hypocritical nature of the capitalist class, exposed the reactionary nature of the Kuomintang "Book of Six Laws" and explained the necessity for its complete revocation. Even though the work of exposing the old legal viewpoints was just beginning during that period, the paths for the ideological struggle between the old and the new law were already determined.

2. The conduct of a judicial reform. After the formation of the Chinese People's Republic, all levels of the people's judicial organs performed an active role in the socialist revolution, particularly in the realization of the land reform and the conduct of the movements "Against the Three Evils" and "Against the Five Evils". [See Note/

[Note/ "Against the Three Evils", i.e. against corruption (predatory actions and graft), squandering and bureaucratism, and "Against Five Evils", i.e. against bribery, tax evasion, padding of government orders, misappropriation of government property by the capitalists, the theft of secret economic information in the government agencies.

The people's courts, in the course of their work, established the closest relationships with the mass movements, accumulated extensive work experience, further trained the cadres who formed the backbone of the national legal system. It must be noted that the people's courts utilized a considerable number of workers of the old legal system. The movement "Against the Three Evils" and "Against the Five Evils" revealed organizational inadequacies in the people's courts.

The judicial reform was conducted under conditions of a fierce political and ideological struggle on the political judicial front. The purpose for it was, on the one hand, the necessity to bring about the final reorganization and consolidation of the work of all the people's courts, their political, ideological and organizational scouring, which was in complete accord with the interests of national construction. On the other hand, the conduct of a judicial reform was necessary for the further improvement in the work of all political-judicial organs, an intensification of the ideological and business guidance of the legal work as well as for the liquidation of the influence of old legal viewpoints in the political-judicial and educational work.

The scientist-jurists and many practicing legal workers, after joining the movement for the conduct of a judicial reform, exposed and subjected to criticism the basic legal concepts of the old legal system that were gaining ground at that time. A considerable number of statutes were published at that time, which were endowed with a high degree of idealism and militancy, and which assisted the legal workers to clearly discern the borderline between the old and the new legal viewpoints. The

active participation of many scientist-jurists in the movement for the conduct of a judicial reform gave them an opportunity to become case-hardened to a certain degree, as well as to raise their ideological-political level and their knowledge of the Marxist-Leninist legal theory.

An inseparable part of the movement for the conduct of a judicial reform was the reorganization of the political-judicial education and of the scientific research work in the field of law. This work began to be gradually carried out directly after the country's liberation. Three months after the foundation of the Central People's Government the Academy of the New Law was created, whose task it was to educate workers of the legal science.

[See Note]

[Note] See "The Program of the Academy of the New Law", Vestnik Kitayskoy Akademii Novogo Prava (^Herald of the Chinese Academy of the New Law), No. 1, page 15.

In 1952, in accordance with the preliminary results of the reorganization of the political-judicial institutes and university departments, on the basis of the experience gained by the law department of the Chinese People's University and that gained by the Central School of Political-Judicial Cadres, established in 1950, the ten political-judicial institutes, departments and schools, which existed at that time, were reorganized on two occasions, as a result of which four new law institutes were created: the Peiping Political-Judicial Institute, the Political-Judicial Institutes of Eastern, Southern and Southwestern China. All these institutes were engaged in training lawyers--practical and scientific workers of the new China.

The consolidation of the judicial system and the reorganization of the political-judicial educational institutions struck the first serious blow at the old reactionary legal viewpoints. These measures undermined the bourgeois ideological viewpoints, intensified the ideological guidance by the working class, basically altered the environment which was observed during the first period after liberation when the network of political-judicial institutions was dispersed and, as a result of that, was unable to respond to the demands of the country. And finally, these measures provided a solution to the problem of training scientific and practicing cadres on a nationwide scale.

3. A national movement for the examination and the discussion of the Constitution. The examination of the constitution was one of the greatest events in the political life of the Chinese People. During the extended period of the revolutionary struggle, the Chinese people avidly desired to get a just constitution.

During the prolonged heroic struggle under the guidance of the Communist Party, the Chinese people overthrew the reactionary domination of the Kuomintang and created a state of people's democratic dictatorship -- the Chinese People's Republic. In

March of 1954 the Central Committee of the Communist Party of China promulgated for discussion the preliminary draft of the constitution which responded to the gains made by the People's Democracy and by socialism. This draft included the new historical experience gained in the revolutionary struggle of the Chinese people as well as the accumulated experience in the building of a state. The discussion of the draft, which lasted over two months, included the participation of over eight thousand representatives from various segments of the population.

On 14 June 1954 the Central People's Government Council published the draft of the Constitution for national discussion, which lasted for over two months. Over 150 million people participated in the discussion of the draft including representatives from all of the political-judicial organs, and political-judicial educational institutions and scientist-jurists. The Chinese Association of Political and Legal Sciences adopted "A decision to support the draft of the Constitution of the Chinese People's Republic"; the association addressed all organizations and called on all activists in the field of law and politics to study the projected constitution conscientiously and thoroughly and to actively participate in its discussion.

The widespread agitational-propaganda work among the masses of people was directed at the realization of a decision by the Central People's Government Council regarding the universal discussion of the projected constitution, for a rise in the ideological level and labor activity of the workers, for the further consolidation of the people's democratic legality and the assurance of success in the struggle for the building of socialism.

The publication of the Constitution caused a considerable enthusiasm among the Chinese people. In the course of the discussions the Chinese scientist-jurists fulfilled an important task -- they conducted widescale propaganda and elucidation work among the masses.

The scientist-jurists took an active part not only in the research, elucidation and propaganda work during the period of examination and publication of the Constitution, but also in the elaboration and discussion of the five laws regarding the organization of state organs. [See Note]

[Note] The law regarding the organization of the All-China People's Representative Conference of the KNR on 20 September 1954; the law regarding the organization of the Government Council of the KNR of 21 April 1954; Law on the organization of the people's courts of the KNR of 21 April 1954; Law regarding the local People's Representative Conferences and Local People's Councils of the KNR of 28 September 1954.

By appearing before cadres, workers, and wide circles of the population with reports, the scientist-jurists illuminated problems associated with the Constitution as well as other legal

problems. A considerable number of important articles were published regarding the nature, peculiarities and the role of the Constitution of the KNR, on the political structure and characteristics of the government, on the regional national autonomy, on the nature, the tasks and principles involved in the activities of the people's courts, the people's prosecutors as well as articles on problems and basic rights and duties of the citizens.

In the course of this variegated activity, the scientist-jurists of the KNR became more proficient in the scientific theory of Marxism-Leninism, regarding the essence of state and law, themselves, but also raised the political-legal knowledge of the masses, struck a serious blow at the anti-national, bourgeois political and legal viewpoints, assisted the government to further consolidate the people's democratic legality and to strengthen the people's democratic dictatorship; they also inspired broad masses to creativity and activity in socialist construction.

4. The struggle against the rightist elements on the legal front, during 1956, was recorded in the history of the KNR as a year of the great turning point. In 1956 the socialist revolution attained a decisive victory on the economic front. Basically three great reorganizations were fully completed: socialist reorganization of private industry and trade, agriculture and the handicraft industry.

The Chinese People's Republic entered a new period in the building of socialism.

A remarkable period for the blossoming of the creative activity of scientists in all fields, including law, came about. Beginning with August of 1956, discussions of the basic problems of legal-scientific research work were actively conducted at the political-judicial institutes and the university law departments. The basic struggle in these discussions developed around the following two questions: (1) How should the history of Chinese law be studied at the present time; (2) The class nature and the position of law and legal science.

Legal literature in the KNR promulgated a whole series of problems, among which such special problems as the suspension of a sentence in criminal-legal processes, principles involved in the resolution of matters pertaining to marriage, and so forth, must also be noted.

In discussing problems associated with Chinese law, certain old jurists, in studying the history of law, attempted to idealize the feudal reactionary legal system which served the interests of the exploiting classes. Some of them attempted to re-incubate old anti-national laws under a pretext of "successiveness of law".

In the summer of 1957 a fierce struggle against the rightist opportunists developed throughout the country on the political and the ideological front of the socialist revolution.

The victory of the socialist revolution will be total only if along with the economic front it will also be victorious on the political and ideological front as well. The anti-party, anti-national and anti-socialist attacks of the bourgeois-rightist elements were scattered throughout the course of the struggle against them and the question of "who will defeat whom" in the struggle between socialism and capitalism is basically resolved in China.

After the publication of the directive by the Central Committee of the Communist Party of China in May of 1957, "On Improvement in the Style of Work", the political-judicial institutions of the country conducted a series of conferences. An exchange of opinions regarding the work of the party was conducted at these conferences, with the presence of the invited non-party activists. The bourgeois rightist elements, hiding among the administrative and legal workers, launched violent attacks against the party and the people at these conferences. The brunt of their attacks was directed against the party guidance of the dictatorship of the proletariat and against the "mass line" policy.

The enemies of socialism appeared against guidance by the Communist Party which is the nucleus of the dictatorship of the proletariat. They attempted to dismiss the party from guiding legal work, to restore the old legal order and organs throughout the country and to take this work into their hands. Some rightist elements began to appear openly with hostile, anti-party slogans and demands without hiding their scheme to eliminate party leadership; they openly promulgated a demand for the creation of a "cabinet of political projects", which would have eliminated the party's guidance in government. The dictatorship of the proletariat is a weapon of the working class, guided by the Communist Party in the matter of liquidating poverty and the exploitation of the working people, and in the matter of building a socialist society. The bourgeois rightist elements were aspiring to destroy this weapon at any price: they disseminated reactionary fabrications regarding the decreasing class struggle, they stated that at the present time there is no need to preserve a dictatorship of the proletariat. The rightist elements classified conflicts with the enemies of socialism as conflicts within the people, in that manner weakening the significance of the dictatorship of the proletariat. Their purpose was the restoration of the dictatorship by the exploiting classes.

A basic political and organization line of the Communist Party and of the Government of China was the "mass line". The rightists launched their attacks against this facet of the party as well. They made statements against the mass movements by the Chinese people, considering that a movement by the people allegedly liquidates legality. The rightists directed particularly vehement attacks against the judicial reforms and the movement for the suppression of counter-revolution. They slanderously

asserted that as a result of such measures "everything went to pieces", they appeared against the "mass line" in legal work. The rightist bourgeois elements attempted to isolate the party and the government from the masses by all possible means, and plotted to restore the bourgeois dictatorship. The struggle against the rightist elements permitted an exposure of the bourgeois rightist fractionists who were for a long time concealed among the scientists and to, in particular, rid the ranks of scientist-jurists of them.

The Communist Party of China still faces a prolonged and multilateral struggle in the re-education of the rightist elements. However, in exposing the anti-party, anti-national and anti-socialist hostile nature of the rightist elements it is necessary to isolate them completely from the people.

Formerly it was still impossible to conduct a systematic analysis and criticism of all the distortions attempted by the rightist elements in the field of science; however, on the basis of the victory over the rightist group, conditions were created for the conduct of a profound and multilateral criticism of the false theories of the rightists from their scientific vantage points; conditions were also created for a final destruction of the influence of the bourgeois rightist ideology in the KNR. At the present time the work of exposing the ideology of the rightist elements is systematically conducted under the guidance of the Communist Party.

5. Scientific research work in the field of law as a result of the establishment of a people's commune.

The creation of people's communes is one of the greatest transformations which occurred in the Chinese society. It was dictated by demands of many millions of peasants and was an inevitable product of the development of China. The creation of people's communes confronted the scientist-jurists of the KNR with new tasks.

The people's communes are "an amalgamation of the organs of power with cooperatives". They unite industry, agriculture, trade, education and the military affairs. This peculiarity of the people's communes serves as evidence of the fact that the low level organs of power in the KNR entered a new stage in their development. The political-judicial organs and organizations, the scientific research and legal educational institutions are watching the development of the movement for the creation of people's communes with great attention. Beginning with September 1958, the workers of these organs and organizations systematically paid visits to villages and studied the changes that occur from the creation of the people's communes, in the low level organs of the people's power; they determined the role and the significance of the people's communes in the acceleration of socialist construction and the transfer to communism; they also evolved proposals regarding legislation associated with the

people's communes.

In the process of transferring from a new democratic to a socialist revolution, extensive and rich experience has been accumulated in the area of political-judicial work and during the period of creation of the people's communes this experience received further creative development. On a basis of the wealth of experience in legal work in the KNR, as well as the objective demands of the present moment, this work, from start to finish, must be conducted under the guidance of the Party Committees in accordance with the course of the "mass line". This course must enrich its content on a basis of continuous further development.

III

The successes of legal science of the new China were attained under the guidance of the Communist Party in the process of conducting the course of the "mass line". The scientific research work must be conducted by the scientist-jurists under a unified party guidance, otherwise the legal science may become isolated from politics, from the people and from reality. How can party guidance be successfully realized in scientific-legal research work?

First of all it is necessary to proceed from the political policy of the party, which is the most important weapon in guiding the life of the entire country. Therefore, independently of which laws of the KNR are studied, it is necessary to be based on the policy of the Communist Party only in that case will it be possible to avoid errors made by the "leftists" or "rightists". The punitive measures, for example, stipulated by the regulations for the punishment of counter-revolutionaries fluctuate from three to five years imprisonment to a death sentence, including a suspended death sentence. It is possible to correctly discuss punitive measures stipulated by the Regulations only in those cases where the discussions are based on a political policy of the party. Therefore a conscientious study of law and subordination to party leadership is absolutely necessary for every scientist-jurist.

In the second place, it is necessary to be guided by the political ideology of the party. Scientist-jurists must be politically literate, they must become hardened in the revolutionary struggle, they must occupy party posts, adhere to the correct political policies and must also actively conduct a determined struggle against all bourgeois concepts.

Furthermore, it is necessary to adhere to the organizational leadership of the party. The organizational leadership of the party in the field of political-legal work is a guarantee of party leadership both in the field of party-politics and in the field of ideology. As organizationally the party is a unified entity, the party committees at various levels successively

execute the decisions of the Central Committee of the party and guide themselves, in doing that, by the party political policy. The party committees are best informed of the developments in the political circumstances on the whole and have a multilateral knowledge of the position in different locations; therefore, they are better able to analyze and resolve questions with a higher degree of accuracy. In order to consolidate the ranks of workers engaged in the legal science it is necessary to transfer into scientific work workers who are quite devoted to party and revolutionary causes.

Scientific research work in the field of law must adhere to the "mass line" which is the basis of any work. Chairman Mao Tse-tung teaches that: "In all practical work by our party the proper leadership must be based on a principal -- to draw from the masses and to bring to the masses. This means: to summarize the opinions of the masses (scattered and unsystematic) and to again bring them to the masses (generalized and systematized as a result of studies), to propagandize and explain them, to make them the ideas of the masses themselves so that the masses could defend their ideas and carry them out; along with that it is also necessary to verify the correctness of these ideas on a basis of the actions of the masses. Then it is necessary to summarize the opinion of the masses once again and to again bring them to the masses, so that the masses could defend them and so on, without end. With each day these ideas will become constantly more correct, more life-like and more valuable. This is taught by the Marxist theory of cognizance. [See Note]

[Note] Mao Tse-tung, Collected Works, Vol. 4, Moscow, 1953, pages 218-219.

It is quite natural that workers in the legal science must not detach themselves from the "mass line" especially after the creation of the people's communes when many new questions arise.

Beginning with the autumn of 1959, many scientific workers of the Institute of Law at the Academy of Sciences KNR, teachers and students of the various educational-legal establishments visited people's communes on more than one occasion, where they conducted scientific work, established widescale contacts with the political-judicial organs at various levels and assisted the masses and the political-judicial organs in resolving all types of problems that arose in practice. All this was conducive to considerable success both in the study of law and in the matter of training judicial cadres. Legal scientific research work must first of all serve the cause of the revolution. It must be of primary importance to workers in the legal science.

The law of the Chinese People's Republic not only came from the masses but it also serves the cause of the continuing revolution. If a certain law is issued which does not stimulate a development of the productive forces it is necessary to immediately and actively attend to its study and to prepare points

substantiating its change or revocation.

Under the conditions of the constantly changing circumstances new problems arise; therefore it is necessary to eliminate all that interferes with labor activity and with the creativity of the people. But in changing the legal norms it is necessary first of all to proceed from a scientific analysis that underwrites the necessity for a revocation or adoption of a certain law.

In order for the laws to correspond to the demands of the situation to an adequate degree, the correspondence between their principal bases and vitality must be complete.

The Chinese People's Republic is a country containing a population of many millions, which consists of many nationalities. The level of political, economic and cultural development within the various regions is quite different. Therefore, in order to develop the creativity of organizations and of the broad masses to a sufficient degree it is necessary, proceeding from the local conditions, to properly utilize the spirit of the law with the party's guidance. The scientist-jurists must always devote attention to that and the scientific-legal work will only then correspond to reality.

In the future the legal scientific research work will be conducted in the Chinese People's Republic first of all in accordance with directives of the VIII Plenum of the Central Committee of the Communist Party of China, 8th Convocation; the scientist-jurists of the KNR must successively struggle for a complete fulfillment of the plan for legal-scientific research work in the spirit of "a struggle against rightist deviation to the best of their abilities".